

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0056P

**Withholding Tax
For the Calendar Year 2003**

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of an annual withholding tax return for the calendar year 2003.

The taxpayer is an in-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer paid the liability in good faith before the Department contacted the taxpayer concerning the liability.

The taxpayer reorganized from a sole proprietorship to a Professional Corporation (P.C.) in 2003. The taxpayer registered for a new withholding account on December 29, 2003. The taxpayer's payroll provider told the taxpayer to send the 2003 withholding payment to the bank and the bank would send the payment to the Department of Revenue. The taxpayer did so and sent a check for \$40,831.16 to the bank. However, the bank sent the \$40,831.16 check to the IRS. As it turns out, the bank does not procedurally send withholding payments to the Department of Revenue. The taxpayer had received erroneous information from the taxpayer's payroll provider concerning the remittance of the withholding payment.

In May 2004, the taxpayer received a \$41,167.09 check from the IRS where the IRS stated the check was an overpayment of the federal withholding account. At the time, the taxpayer did not understand the \$41,167.09 check. The taxpayer did not figure out that the Department of Revenue had not received its withholding payment until October 2004. In October 2004, the taxpayer sent the \$41,167.09 IRS check to the Department for payment of the 2003 withholding liability.

With regard to the Department contacting the taxpayer, the Department is not obliged to contact the taxpayer for an unfilled tax period. When the taxpayer files a return, the Department has three years in which to contact the taxpayer.

With regard to timeliness, the Department did not receive payment until October 2004. This payment is seven months after the due date, and, five months after the IRS informed the taxpayer of a payment problem.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.